In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 995

AMERICAN ART INDUSTRIES, INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

This case presents the same basic question involved in *National Labor Relations Board* v. *American Cable Systems, Inc.*, No. 737, 1970 Term, certiorari denied, December 14, 1970. The issue is whether the Board, in determining whether employer unfair labor practices preclude the holding of a fair election and render a bargaining order appropriate, may properly disregard the effect of employee turnover in the bargaining unit which occurred a substantial period after the unfair labor practices took place.[1] In *American*

[1] In *American Cable*, there was also the fact that the management official who had committed the unfair labor practices had subsequently left the company.

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Cable, one panel of the Fifth Circuit answered this question negatively (427 F. 2d 446); in this case, on different facts, another panel of that court answered it affirmatively (Pet. 5–8; Pet. App. 1–3). The Board believes that, while the court of appeals correctly decided this case, the issue warrants resolution by this Court. However, presumably the same considerations which led the Court to deny the Board's petition in *American Cable* would also lead it to deny the petition here. See also *National Labor Relations Board* v. *Clark's Gamble Corp.*, No. 265, 1970 Term, certiorari denied, October 19, 1970. Accordingly, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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DECEMBER 1970.

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